

**BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA**

Docket No. 2003-326-C

IN RE:	)	
	)	
Analysis of Continued Availability	)	<b>BIRCH TELECOM OF</b>
Of Unbundled Local Switching for	)	<b>THE SOUTH, INC.'S</b>
Mass Market Customers Pursuant	)	<b>OBJECTIONS TO</b>
To the Federal Communication	)	<b>BELLSOUTH'S FIRST</b>
Commission's Triennial Review Order	)	<b>REQUESTS FOR PRODUCTION</b>
	)	<b>OF DOCUMENTS</b>

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Birch Telecom of the South, Inc. ("Birch"), pursuant to the Rules of Practice and Procedure of the South Carolina Public Service Commission ("Commission") and pursuant to the South Carolina Rules of Civil Procedure, hereby generally and specifically objects to BellSouth Telecommunications, Inc.'s (hereinafter "BellSouth") First Requests for Production of Documents served on November 17, 2003. The Objections stated herein are preliminary in nature and are made at this time for the purpose of complying with the ten-day requirement as set forth in the CompSouth/BellSouth Joint Motion for Initial Procedural Order filed on November 12, 2003. Subject to the objections stated herewith, Birch will respond to BellSouth's First Requests for Production of Documents pursuant to the terms of the Proposed Initial Procedural Order. Any answer that Birch may provide in response to the BellSouth discovery will be provided subject to, and without waiver of, these objections. Birch reserves the right to amend, supplement, or revise these objections, and assert additional objections, should Birch discover additional grounds for objecting as Birch prepares its responses to any discovery request or at any time prior to hearing.

## **I. General Objections**

Birch makes the following General Objections to BellSouth's First Requests for Production of Documents, including the applicable definitions and instructions therein ("BellSouth discovery"), which as appropriate, will be incorporated into each relevant response when such responses are served on BellSouth.

1. Birch objects to the BellSouth discovery to the extent that such discovery seeks to impose an obligation on Birch to respond on behalf of subsidiaries, affiliates, or other persons that are not parties to this case on the grounds that such discovery is overly broad, unduly burdensome, oppressive, and not permitted by applicable discovery rules. Birch further objects to any and all BellSouth discovery that seeks to obtain information from Birch for Birch subsidiaries, affiliates, or other related Birch entities that are not certificated by the Commission. BellSouth's definitions of "you", "your" and "company" are examples of BellSouth's attempt to impose the above-referenced obligation on Birch.

2. Birch has interpreted the BellSouth discovery to apply to Birch's regulated intrastate operations in South Carolina and will limit its responses accordingly. To the extent that any BellSouth discovery is intended to apply to matters that take place outside the state of South Carolina and which are not related to South Carolina intrastate operations subject to the jurisdiction of the Commission, Birch objects to such request as irrelevant, overly broad, unduly burdensome, and oppressive.

3. Birch objects to the BellSouth discovery to the extent that such discovery calls for information which is exempt from discovery by virtue of the attorney-client privilege, work product privilege, or other applicable privilege.

4. Birch objects to the BellSouth discovery insofar as such discovery is

vague, ambiguous, overly broad, imprecise, or utilizes terms that are subject to multiple interpretations and are not properly defined or explained for purposes of these requests. Any responses provided by Birch in response to BellSouth discovery will be provided subject to, and without waiver of, the foregoing objection.

5. Birch objects to the BellSouth discovery insofar as such discovery is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this action.

6. Birch objects to the BellSouth discovery insofar as it seeks information or documents, or seek to impose obligations on Birch which exceed the requirements of the South Carolina Rules of Civil Procedure, South Carolina law, or the rules and regulations of the South Carolina Public Service Commission.

7. Birch objects to providing information to the extent that such information is already in the public record before the South Carolina Public Service Commission, the FCC, is otherwise publicly available, or which is already in the possession, custody, or control of BellSouth.

8. Birch objects to the BellSouth discovery to the extent that such discovery is overly broad, unduly burdensome, expensive, oppressive, or excessively time consuming as written.

9. Birch objects to each and every request to the extent that the information requested constitutes "trade secrets," confidential or proprietary information, which are privileged or exempt from public disclosure pursuant to applicable South Carolina law or rules of the Commission.

10. Birch is an entity with employees located in different locations in South

Carolina and in other states. In the course of its business, Birch creates countless documents that are not subject to South Carolina Public Service Commission or FCC retention of records requirements. These documents are kept in numerous locations and are frequently moved from site to site as employees change jobs or as the business is reorganized. Therefore, it is possible that not every document has been identified in response to these requests. Birch will conduct a reasonable and diligent search of those files that are reasonably expected to contain the requested information. To the extent that the BellSouth discovery purports to require more, Birch objects on the grounds that compliance would impose an undue burden or expense.

11. Birch objects to the BellSouth discovery that seeks to obtain “all,” “each,” or “every” document, item, customer, or other such piece of information to the extent that such discovery is overly broad and unduly burdensome. Any answers that Birch may provide in response to the BellSouth discovery will be provided subject to, and without waiver of, this objection.

12. Birch objects to the BellSouth discovery to the extent such discovery seeks to have Birch create documents not in existence at the time of the request.

13. Birch objects to the BellSouth discovery as overly broad and unduly burdensome to the extent that such discovery is not limited to any stated period of time or a stated period of time that is longer than is relevant for purposes of the issues in this docket.

14. In light of the short period of time Birch has been afforded to respond to the BellSouth discovery, the development of the Birch positions and potentially responsive information to the BellSouth requests is necessarily ongoing and continuing.

This process is further complicated since at this point in time; the actual issues to be set forth for hearing in this docket have not yet been established by order of the Commission. Accordingly, these are preliminary objections to comply with the CompSouth/BellSouth Joint Motion for Initial Procedural Order and Birch reserves the right to supplement, revise, or modify its objections at the time that it serves its actual responses to the BellSouth discovery. However, Birch does not assume an affirmative obligation to supplement answers on an ongoing basis, contrary to the BellSouth General Instruction.

15. Birch objects to BellSouth's First Requests for Production to Birch to the extent that the Requests purport to seek discovery of information and/or materials containing the mental impressions, conclusions, opinions or legal theories of any attorney or other representative of Birch concerning the subject of the proceeding and prepared and developed in anticipation of litigation pursuant to S.C. Ann. Regs. 103-851 and 103-854 and South Carolina Rules of Civil Procedure, Rule 34, without the requisite showing from BellSouth that the denial of production or inspection will unfairly prejudice BellSouth in preparing its claim or defense or will cause BellSouth undue hardship or injustice.

16. Birch objects to the BellSouth discovery to the extent that the definitions operate to seek discovery of matters other than those subject to the jurisdiction of the Commission, pursuant to the FCC's Triennial Review Order, Commission regulations and South Carolina law.

17. Birch objects to the BellSouth discovery to the extent that it asks for information that may not be available in precisely the same format, category, or definitions from Birch systems, which systems are limited in terms of their capacity to

produce unlimited reports and information in any format, category or definition requested.

## **II. Specific Objections**

Birch makes the following Specific Objections to the BellSouth discovery, which as appropriate will be incorporated into each relevant response when Birch's responses are served on BellSouth.

18. Birch objects to each and every request for production that seeks information regarding Birch's operations in Incumbent Local Exchange Carrier (hereinafter "ILEC") service areas other than the BellSouth ILEC service area within the state of South Carolina as such information is irrelevant to BellSouth's case in this docket and such discovery is overly broad and unduly burdensome.

19. Birch objects to each and every request for production that seeks to obtain information regarding "former officers, employees, agents, directors, and all other persons acting or purporting to act on behalf of Birch" as such information is not within Birch's control, would be unduly burdensome to attempt to obtain and is likely irrelevant.

20. To the extent that BellSouth's discovery requests specific financial, business or proprietary data regarding Birch's economic business model, Birch objects to providing any such information on the grounds that those requests presume the market entry analysis is contingent upon Birch's economic business model instead of a hypothetical business model contemplated by the Triennial Review Order and such information is confidential and proprietary to Birch.

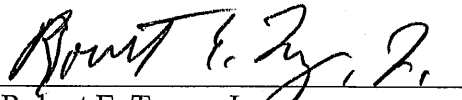
21. Outside of the discovery request served by BellSouth, there have been discussions between BellSouth and some of the Competitive Local Exchange Carrier's

(hereinafter "CLEC") that this discovery is "regional" in nature and that BellSouth would prefer that the CLECs respond on a regional basis without additional service in these other states. At this point in time, without necessarily agreeing or disagreeing with BellSouth's request for regional answers, Birch reserves its rights to object to providing responsive information for states other than South Carolina. Further, in the event Birch does provide responsive information for states other than South Carolina pursuant to the discovery in this South Carolina docket, Birch reserves its rights to not provide such non-South Carolina information in the South Carolina Commission docket. Finally, in the event Birch does provide information for states other than South Carolina pursuant to the discovery in this South Carolina docket, Birch reserves its rights to provide such non-South Carolina information on a schedule other than that provided solely for this Commission docket.

22. Birch objects to the production of documents regarding any interrogatory to which Birch has objected.

23. Birch incorporates each General Objection to each and every BellSouth request for production of documents.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By:   
Robert E. Tyson, Jr.  
1310 Gadsden Street (29201)  
Post Office Box 11449  
Columbia, South Carolina 29211  
Telephone: (803) 929-1400  
Facsimile: (803) 231-7888  
[rtyson@sowell.com](mailto:rtyson@sowell.com)

Attorneys for Birch Telecom of the South, Inc.

Columbia, South Carolina  
December 1, 2003

**CERTIFICATE OF SERVICE**

I, the undersigned paralegal of the law offices of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for Birch Telecom of the South, Inc., do hereby certify that I have a copy of the pleading(s) hereinbelow specified via e-mail to the following address(es):

**Pleadings:** **Birch Telecom of the South, Inc.'s Objections to  
BellSouth's First Requests for Production of Documents**

**Counsel Served:** Elliott F. Elam, Jr. Esquire  
**South Carolina Department of Consumer Affairs**  
[Elam@dca.state.sc.us](mailto:Elam@dca.state.sc.us)

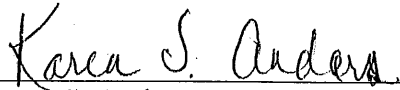
John J. Pringle, Jr., Esquire  
Ellis, Lawhorne & Sims, P.A.  
**Attorney for AT&T Communications of the Southern  
State, L.L.C. and Access Integrated Networks, Inc.**  
[jpringle@ellislawhorne.com](mailto:jpringle@ellislawhorne.com)

Patrick W. Turner, Esquire  
**Attorney for BellSouth Telecommunications, Inc.**  
[patrick.turner@bellsouth.com](mailto:patrick.turner@bellsouth.com)

F. David Butler, Esquire  
**South Carolina Public Service Commission**  
[david.butler@psc.state.sc.us](mailto:david.butler@psc.state.sc.us)

Bruce Duke  
Acting Executive Director  
**South Carolina Public Service Commission**  
[bruceduke@psc.state.sc.us](mailto:bruceduke@psc.state.sc.us)

Robert E. Tyson, Jr., Esquire  
Sowell Gray Stepp & Laffitte, L.L.C.  
**Attorney for Competitive Carriers of the South, Inc.  
("CompSouth")**  
[rtyson@sowell.com](mailto:rtyson@sowell.com)

  
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Karen S. Anders  
Litigation Paralegal

December 1, 2003